

PRO SE

Edson Gardner, Attorney Pro-Se.  
 Lynda Kozlowicz, Attorney Pro-Se.  
 Athenya Swain, Attorney Pro-Se.  
 Johnny Slim, Attorney Pro-Se.  
 Post Office Box 472  
 Fort Duchesne, Utah 84026  
 Telephone; (423) 722-8224 or 722-6707

FILED  
 U.S. DISTRICT COURT

2012 JUL 13 P 12:54

DISTRICT OF UTAH

BY: \_\_\_\_\_  
 DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF UTAH CENTRAL DIVISION

Honorable Clair M. Poulson,  
 Judge of the Duchesne County  
 Justice Court, and Derek  
 Dalton,

Plaintiff(s),

v.

Civil No. 212-CV-00497-**DAK**

DEFENDANTS APPEAL MOTION  
 FOR REMOVAL AND REMAND AND  
 TO CONSOLIDATE CASES

Ute Indian Tribe of the  
 Uintah and Ouray Reservation,  
 Business Committee for the Ute  
 Tribe of the Uintah and Ouray  
 Reservation, Tribal Court for  
 the Ute Tribe of the Uintah and  
 Ouray Reservation, Irene C. Cuch,  
 in her official capacity as Chairman  
 of the Business Committee for the  
 Ute Tribe, Ronald J. Wopsock, in  
 his official capacity as vice-  
 chairman of the Business Committee  
 for the Ute Tribe, Frances Poowewgup,  
 in her official capacity as a Member  
 of the Business for the Ute Tribe,  
 Stuart Pike, Sr., in his official  
 capacity as a Member of the for the  
 Ute Tribe, Richard Jenks, Jr., in his  
 official capacity as a Member of the  
 Business for the Ute Tribe, Phillip  
 Chimburas, in his official capacity  
 as a Member of the Business for the  
 Ute Tribe, Honorable Smiley Arrowchis,  
 in his official capacity as Chief Judge  
 of the Ute Trial Court, Dean Reed, and

Lynda Kozlowicz, Edson Gardner, Kozlowicz  
& Gardner Advocate, Inc., a Ute Tribe  
Business License, and Athenya Swain.  
and Johnny Slim.

Magistrate Judge; E. J. Furse

Defendant(s),

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**TO THE HONORABLE MAGISTRATE JUDGE EVELYN J. FURSE;**

Defendants, Edson Gardner, Attorney Pro-Se, and Lynda Kozlowicz, Attorney Pro-Se, and Athenya Slim, Attorney Pro-Se, and Johnny Slim, Attorney Pro-Se, files Appeal Motion For Removal and Remand And To Consolidate Cases as follows;

**BACKGROUND**

Defendants (Indians), attempts to remove Duchesne County Justice Court case to federal District Court. Such removal was proper. The Duchesne County Justice Court, State of Utah v. Slim, Case No. 1252010232 dated June 29, 2012 (Ruling on Motion) Appeal in this matter;

1. Defendant (Indians) filed Complaint in Ute Tribal Court against Hon. Poulson and Derek for claims arising under Ute tribal law, Title XII - Ute Indian Rule of Criminal Procedure, pursuant to Search and Seizure, Rule 31, and Arrest Rule 32, and Extradition Rule 33, Ute Law and Order Code.

2. Defendant (Indians) motion to consolidate cases in federal District Court for issues against Hon. Poulson, and Derek, to consolidate adjudication of claims arising under Ute

tribal law.

3. The Ute Tribal Court has exclusive jurisdiction over claims arising under Ute tribal law. Those claims are not subject to removal. Honorable Poulson, and Derek has not exhausted Ute tribal Court remedies required by federal and tribal exhaustion doctrine and Duchesne County Justice Court and this federal Court lacks subject matter jurisdiction in Prairie Band Potawatomi Nation v. Wagon, 402 F. 3d 1015 (10th Cir. 2005), permanently enjoined Utah from further application and enforcement of motor vehicle registration and titling laws against Indians, and who operate or own vehicle properly registered and titled under tribe's motor vehicle code. The 10th Cir. Court having appropriately balanced interest at issue in accordance with federal and tribal law and determined federal and tribal interest is promoting strong tribal economic development, self-sufficiently, and self-governance and preempting Utah State's asserted interest in public safety on the Uinta Reserve, and Uintah County Sheriff Dept. as Misdemeanor charged with violation of speeding, 41-6a-601, and expired or no license (Never Obtained), 53-3-202, as \$100.00 cash bail or cash deposited by Athenya Swain dated 9, of July 2012.

4. Plaintiff Hon. Poulson, acted as Duchesne County

officer when he issued warrant and Uintah County executed warrant against Defendant (Indian), and Execution of Warrant Against Defendant Indians violates tribal immunity by State of Utah v. Athenya Swain, Case No. 125200079 as cash bail or cash deposited \$527.00 for Athenya Swain dated 9, of July 2012. Duchesne County Justice Court's conduct was violation of Fourth Amendment is buttressed by causing execution of State warrant just as in United States v. Baker, 894 F. 2d 1144 (10th Cir. 1990), county sheriff executed search warrant on tribal property. The court held, because it was undisputed, property was tribal land and state had never obtained jurisdiction over such lands, the search warrant was in violation of Fourth Amendment.

#### **STANDARD**

5. The removal jurisdiction granted pursuant to Action for removal generally, 28 U.S.C. 1441 and Civil rights removal, 28 U.S.C. 1443 speaks only of actions brought in Duchesne County Justice Court; Becenti v. Vigil, 902 F. 2d 777 (10th Cir. 1990). Until and unless Congress includes Ute Tribal Courts in removal statutes, federal Courts cannot exercise jurisdiction over action commenced in Ute Tribal Courts. The Plaintiffs Hon. Poulson, and Derek, Duchesne County Justice Court prerequisite that's identified in 28

U.S.C. 1441 applicable to actions properly removed under 28 U.S.C. 1441. Weso v. Memominee Indian School Dist, 915 F. Supp. 73 (1995).

#### ARGUMENT

6. Defendant (Indians) reliance on 28 U.S.C. 1441 as basis of removal is proper.

7. Controlling case law in 10th Circuit says 28 U.S.C. 1441 speaks only of removal of actions first brought in Duchesne County Justice Court. Specifically, the Court ruled 28 U.S.C. 1441, which contains Duchesne County Justice Court's limitation for removal like that found in 28 U.S.C. 1441, does not extend to Ute Tribal Court. Becenti v. Vigil, 902 F. 2d 777 (10th Cir. 1990). The Ute Tribal Court is not State Court under meaning of 28 U.S.C. 1441, and therefore removal statute does not apply. Congress has amended removal statute to permit removal from courts other than State courts to include District of Columbia and Puerto Rico. Congress has power to amend removal statutes to includes Ute Tribal Courts, but at this date has not done so, therefore removal statute cannot be applied to Ute Tribal Courts.

For these reasons, Defendant (Indians) respectfully requests this Court to:


1. Deny Hon. Poulson, and Derek, Notice of Removal and

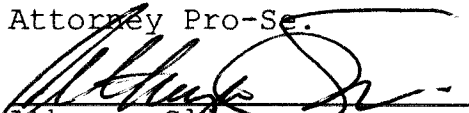
Motion to Consolidate Cases within Federal District Court.


2. Defendant (Indian) motion to remand to Ute Tribal Court.

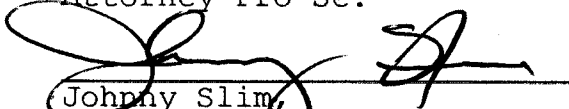
3. Declare the federal District Court lacks subject matter jurisdiction over this matter.

Respectfully submitted this day 12 of July 2012.

  
Edson Gardner, Uintah  
Attorney Pro-Se.

  
Athenya Slim,  
Attorney Pro-Se.

  
Lynda Kozlowicz,  
Attorney Pro-Se.

  
Johnny Slim,  
Attorney Pro-Se.

DUCHESNE COUNTY JUSTICE COURT  
DUCHESNE COUNTY, STATE OF UTAH

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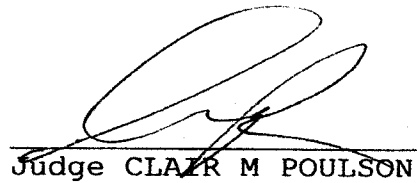
STATE OF UTAH,	:	
Plaintiff,	:	RULING ON MOTION
	:	
vs.	:	Case No: 125201023
JOHNNY SLIM,	:	Judge: CLAIR M POULSON
Defendant.	:	Date: June 29, 2012

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Judge Poulson has reviewed The Defendant's Notice of Removal and Motion to Stay.

The Motion has been denied.

Date: 06/29/2012



Judge CLAIR M POULSON

Receipt No. 32422 JUL-09-12

RECEIVED FROM

SHELIA LEBARON

BAIL FOR SWAIN, ANTHENYA

ONE HUNDRED AND DOLLARS

0/100

JAIL TRUST FUND \$100.00

How Paid

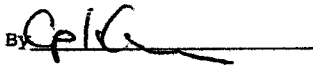
Cash

Checks

\$100.00

\$0.00

By

A handwritten signature in black ink, appearing to be "C. L. G.", is written over a horizontal line.



BAIL RECORD NO. 32422

BAIL TYPE CASH

09TH Day of July ,  
2012

IN THE COURT OF  
UINTAH COUNTY JUSTICE  
COURT

641 EAST 300 SOUTH  
VERNAL, UT 84078

STATE OF: UT

RECEIVED FROM  
SHELIA LEBARON

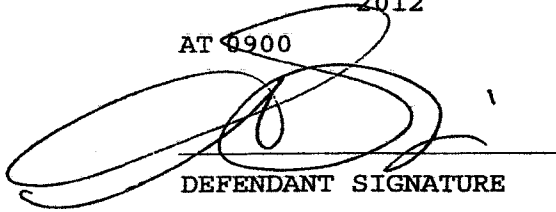
THE SUM OF \$100.00

ONE HUNDRED AND 0/100  
AS CASH BAIL OR CASH  
DEPOSIT FOR

SWAIN, ATHENYA  
PENDING HIS/HER APPEARANCE

26TH Day of July ,  
2012

AT \$900



DEFENDANT SIGNATURE

OFFENSE CHARGED  
SPEEDING, DRIVING ON  
EXPIRED DL

ARRESTED BY:  
HILL

ARRESTING AGENCY  
UCSO

BOOKED BY: CPL. GOWEN

16 + OCCUPANTS <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO COMPANY/UNIT # _____ CITY/STATE _____ / _____		AND SUBMITS TO APPEAR																																																																																																			
STATE OF UTAH <input checked="" type="checkbox"/> COUNTY OF <u>Uintah</u> <input type="checkbox"/> CITY OF _____  THE DEFENDANT IS HEREBY GIVEN NOTICE TO APPEAR IN: COURT OF <u>Uintah County Justice Court</u> LOCATED AT 641 E 300 S Suite #100 Vernal, UT  PHONE # (435) 781-5338		ORI: <u>UT0240000</u> Name (Last) (First) (Middle) DOB <b>SWAIN ATHENYA RAY</b> <b>06/16/1976</b> Street, City, State, Zip <b>605 N 5750 E, FORT DUCHESNE, UT, 84026</b> <table border="1" style="width:100%; font-size: x-small;"> <tr> <td>Driver License # <b>153092413</b></td> <td>CDL Presented <input type="checkbox"/> Yes <input type="checkbox"/> No</td> <td>Expires <b>06/16/2012</b></td> <td>State <b>UT</b></td> <td>Restriction <b>B</b></td> <td>Birth Place</td> <td>Social Sec. # <b>529-21-3936</b></td> <td>Motorcycle <input type="checkbox"/> Y <input checked="" type="checkbox"/> N</td> </tr> <tr> <td>Gender <b>F</b></td> <td>Ethnic Code <b>I</b></td> <td>Height <b>5'04"</b></td> <td>Weight <b>165</b></td> <td>Eyes <b>BRO</b></td> <td>Hair <b>BRO</b></td> <td>Vehicle/Vessel License No. <b>C942EP</b></td> <td>State <b>UT</b></td> </tr> <tr> <td colspan="2">Picture ID <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</td> <td>Vehicle Make <b>GMC</b></td> <td>Vehicle Model <b>ACADIA S</b></td> <td>Vehicle Type <b>05</b></td> <td>Vehicle Year <b>2008</b></td> <td>Vehicle Color <b>SIL</b></td> <td>Accident <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</td> </tr> </table> ON (DATE) <u>07/09/2012</u> MILITARY TIME <u>12:33:58</u> DIRECTION OF TRAVEL N <input type="checkbox"/> S <input checked="" type="checkbox"/> E <input type="checkbox"/> W <input type="checkbox"/> LOCATION <u>100 N Whiterocks rd</u> COUNTY <u>Uintah</u> MILE POST NO. _____ THE ABOVE NAMED DEFENDANT IS CHARGED WITH VIOLATING: <table border="1" style="width:100%; font-size: x-small;"> <thead> <tr> <th>UT</th> <th>CO</th> <th>CY</th> <th></th> <th>Code #</th> <th>Severity</th> </tr> </thead> <tbody> <tr> <td><input checked="" type="checkbox"/></td> <td></td> <td></td> <td>Speeding</td> <td>41-6a-601</td> <td>Misdemeanor</td> </tr> <tr> <td><input checked="" type="checkbox"/></td> <td></td> <td></td> <td>Expired or No License (Never Obtained)</td> <td>53-3-202</td> <td>Misdemeanor</td> </tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> <table border="1" style="width:100%; font-size: x-small;"> <tr> <td>Radar <b>40</b></td> <td>Speeding <b>32</b> in a <b>25</b> zone</td> <td>MPH Over <b>7</b></td> <td>Interstate <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</td> <td>Alcohol BAC</td> </tr> </table> WITHOUT ADMITTING GUILT, I PROMISE TO APPEAR AS DIRECTED HEREIN: SIGNATURE <u>X [Signature]</u> Signature of Judge or Court Clerk Required _____ I CERTIFY THAT A COPY OF THIS CITATION OR INFORMATION WAS GIVEN TO THE DEFENDANT ACCORDING TO LAW ON THE ABOVE DATE AND I KNOW OR BELIEVE AND SO ALLEGE THAT THE ABOVE NAMED DEFENDANT DID COMMIT THE OFFENSE HEREIN SET FORTH CONTRARY TO LAW. I FURTHER CERTIFY THAT THE COURT TO WHICH THE DEFENDANT HAS BEEN DIRECTED TO APPEAR IS THE PROPER COURT PURSUANT TO SECTION 77-7-21, U.C.A.  OFFICER <u>Hill J</u> ID# <u>S399</u> COMPLAINANT _____ ID# _____ DATE OF CITATION <u>07/09/2012</u> <table border="1" style="width:100%; font-size: x-small;"> <tr> <td>DEFENDANT</td> <td>Date Sent to DLD</td> <td>Docket No.</td> </tr> </table>		Driver License # <b>153092413</b>	CDL Presented <input type="checkbox"/> Yes <input type="checkbox"/> No	Expires <b>06/16/2012</b>	State <b>UT</b>	Restriction <b>B</b>	Birth Place	Social Sec. # <b>529-21-3936</b>	Motorcycle <input type="checkbox"/> Y <input checked="" type="checkbox"/> N	Gender <b>F</b>	Ethnic Code <b>I</b>	Height <b>5'04"</b>	Weight <b>165</b>	Eyes <b>BRO</b>	Hair <b>BRO</b>	Vehicle/Vessel License No. <b>C942EP</b>	State <b>UT</b>	Picture ID <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Vehicle Make <b>GMC</b>	Vehicle Model <b>ACADIA S</b>	Vehicle Type <b>05</b>	Vehicle Year <b>2008</b>	Vehicle Color <b>SIL</b>	Accident <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	UT	CO	CY		Code #	Severity	<input checked="" type="checkbox"/>			Speeding	41-6a-601	Misdemeanor	<input checked="" type="checkbox"/>			Expired or No License (Never Obtained)	53-3-202	Misdemeanor																																																	Radar <b>40</b>	Speeding <b>32</b> in a <b>25</b> zone	MPH Over <b>7</b>	Interstate <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Alcohol BAC	DEFENDANT	Date Sent to DLD	Docket No.
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## INSTRUCTIONS READ CAREFULLY

Signing this citation is not an admission of guilt but merely a promise to appear at the time and place designated. However, if you refuse to sign, the officer must take you into custody where you must post bail before you will be released.

Before entering Court you must present your copy of the citation to the Clerk of the Court at which time you will be instructed as to whether the violation charge may be disposed of by posting bail or forfeiting bail. If bail can be forfeited to dispose of the charge you may post bail on or before the court appearance date on your citation during the regular hours of the Clerk's office.

If you disagree with the charges or are so instructed by the Clerk you must personally appear, or by counsel appear, in Court at the date and time indicated by the officer on the citation, and enter a plea of "NOT GUILTY" and a trial date will be set.

If you forfeit bail or enter a plea of guilty in Court OR are found guilty after a trial on a moving traffic violation, the forfeiture or conviction will be reported to the State Department of Public Safety, Driver's License Division, and will be recorded against your driving record.

This citation is not an information and will not be used as an information without your consent. If an information is filed you will be provided a copy by the court. You MUST appear in court on or before the date and time set in this citation. IF YOU FAIL TO APPEAR, AN INFORMATION WILL BE FILED AND THE COURT MAY ISSUE A WARRANT FOR YOUR ARREST. FAILURE TO APPEAR as promised or failure to post bail on or before such appearance date, where forfeitures are permitted, constitutes a separate and additional offense, a misdemeanor, for which the law provides a penalty of up to 6 months in jail or \$1000 fine or both.

Certificate of Repair  
Correction of the non-moving equipment or dog license violation on this citation has been verified by the Police Department.

This signed certificate MUST BE RETURNED TO THE COURT NO LATER THAN FOURTEEN (14) DAYS AFTER THE ISSUANCE OF THE CITATION. IN ADDITION, you must in no less than five (5) nor more than fourteen (14) days after issuance of the citation contact the Court and resolve the matter. If your appearance is mandatory or you wish so appear before the judge, you must appear on the date indicated on the front of the citation.

OFFICER: \_\_\_\_\_ BADGE #: \_\_\_\_\_

AGENCY: \_\_\_\_\_ DATE: \_\_\_\_\_

# UINTAH COUNTY JAIL

## NOTICE OF FEES

EFFECTIVE 5/01/04, THE UTAH COUNTY JAIL WILL CHARGE EVERY PERSON BOOKED INTO THE JAIL A \$ 10.00 LINEN AND HYGIENE FEE. THIS FEE IS DUE AND PAYABLE AT THE TIME OF BOOKING, AND WILL BE COLLECTED AT THE TIME OF BOOKING, IF POSSIBLE. IN ANY EVENT, THE FEE WILL BE COLLECTED FROM THE ARRESTEE PRIOR TO THEIR BEING RELEASED FROM CUSTODY.

IN THE EVENT A PRISONER DOES NOT HAVE THE SUFFICIENT FUNDS NECESSARY TO PAY THIS FEE PRIOR TO OR AT THE TIME OF THEIR RELEASE, A DEBIT ACCOUNT WILL BE CREATED IN THE PRISONER'S NAME, AND ANY AMOUNTS OWED TO THE JAIL MAY BE COLLECTED AT THE TIME OF ANY SUBSEQUENT BOOKINGS, OR BY ANY OTHER MEANS LEGALLY AVAILABLE, WHICH MAY INCLUDE FORMAL COLLECTION PROCEDURES.

BY MY SIGNATURE BELOW, I HEREBY ACKNOWLEDGE THAT I UNDERSTAND THIS NOTICE, AND THAT I HAVE RECEIVED A COPY OF THIS NOTICE. MY SIGNATURE ON THIS FORM IS NOT AN ADMISSION OF GUILT TO ANY CRIMINAL CHARGE THAT MAY BE PENDING AGAINST ME.

<u>SWAN AMELIA R</u> PRINT ARRESTEE'S NAME LEGIBLY	<u>3872</u> S.O #	<u>7/9/12</u> BOOKING DATE
<u>UOSO</u> ARRESTING AGENCY		<u>Hall</u> ARRESTING OFFICER
<u>[Signature]</u> ARRESTEE'S SIGNATURE		<u>[Signature]</u> CORR. OFFICER NAME

Please see reverse side of this form for all fees charged by the jail

DO NOT WRITE BELOW THIS LINE

DATE PAID: \_\_\_\_\_

HOW PAID: \_\_\_\_\_

White: Inmate File

Yellow: Jail Administration

Pink: Defendant

Receipt No. 32424 JUL-09-12

RECEIVED FROM

SHELIA LEBARON

BAIL FOR SWAIN, ATHENYA

FIVE HUNDRED TWENTY DOLLARS

SEVEN AND 0/100

JAIL TRUST FUND \$527.00

How Paid

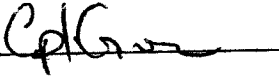
Cash

Checks

\$527.00

\$0.00

By



UTAH STATEWIDE WARRANTS 07/09/2012 12:40  
NAM/SWAIN ATHENYA RAY .COUNT/03.  
ADR/605 N 5750 E FORT DUCHESNE, UT 84026.  
SSN/529213936.OLN/153092413.OLS/UT.  
DOB/06161976.SEX/F.HGT/504.WGT/165.EYE/BRO.HAI/BRO.

OFFENSE/FAIL TO APPEAR ON CITATION : MB.  
BAIL/527.  
WARR TYPE/A.WARRANT#/1493631.OTN/C114951411.  
COURT/J0709 DUCHESNE COUNTY WEST JUSTICE COURT.COURT CASE#/125200079.  
DATE ISSUED/02232012.JUDGE/CLAIR POULSON.  
ORIG AGENCY/UCHESNE COUNTY SHERIFF.  
OAC/ .

PROCEDURE/ IF UNABLE TO POST BAIL, HOLD FOR TRANSPORTATION.  
BAIL GUARANTEES APPEARANCE ONLY. DIRECT TO COURT.

TRANSPORT DESIGNATION/HOLD FOR TRANSPORT STATEWIDE.

CLICK HERE FOR COURT PHONE NUMBER AND ADDRESS

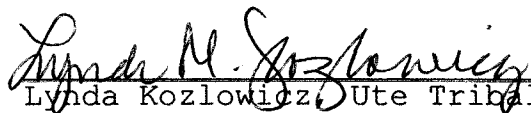
SERVED @  
WINNIE COUNTY JAIL  
7/9/12 @ 14:29  
BY J. HILL

**CERTIFICATION OF SERVICE**

This is to certify true and correct copy of **DEFENDANTS APPEAL MOTION FOR REMOVAL AND REMAND TO CONSOLIDATE CASES**, foregoing document was delivered by mail first class, postage prepaid and addressed as follows on this 12, day of July, 2012.

Jesse C. Trentadue  
Carl F. Huefner  
Noah M. Hoagland  
Britten R. Butterfield  
SUITTER AXLAND, PLL  
8 EAST BROADWAY, SUITE 200  
Salt Lake City, Utah 84111

Marea A. Dorty  
Deputy Duchesne County Attorney  
Post Office Box 346  
Duchesne, Utah 84021

  
Lynda Kozlowicz, Ute Tribal Member,  
Attorney Pro-Se.